

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**EDDIE L. KLEIN**

Claimant

VS.

**CHERRY VILLAGE**

Respondent

AND

**KANSAS HEALTH CARE ASSOCIATION**

Insurance Carrier

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) Docket Nos. 198,370 & 198,371  
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**ORDER**

Claimant appeals from a March 16, 1995 Preliminary Hearing Order of Administrative Law Judge George R. Robertson which denied preliminary benefits.

**ISSUES**

On appeal, claimant contends the Administrative Law Judge exceeded his jurisdiction in denying benefits because the evidence established that claimant is entitled to medical compensation as a result of two compensable work-related injuries which arose out of and in the course of claimant's employment with the respondent. Respondent denies accident arising out of and in the course of employment with respect to both docketed claims and denies timely notice was given to respondent by claimant of his alleged accidents.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding by the Administrative Law Judge that claimant did not sustain his burden of proving that his two claimed accidents arose out of and in the course of his employment with respondent should be affirmed.

The weight of the credible evidence persuades this trier of fact that the claimant's injuries did not occur in the manner to which claimant testified. The issue of whether claimant suffered personal injuries arising out of and in the course of his employment with

respondent turns primarily on the credibility and believability of the witnesses. The Administrative Law Judge had the opportunity to observe the testimony of the witnesses. He determined the testimony of respondent's witnesses was more credible and believable than the testimony given by claimant. This finding is supported by the fact that claimant admitted having experienced prior work-related injuries which resulted in workers compensation claims. He was aware of his obligation to timely report accidents and of the employer's obligation to provide medical treatment. Despite this, claimant did not request medical treatment for his injuries from his employer during the time of his employment, nor did he seek medical treatment on his own until after consulting with an attorney. Although the claimant alleges he reported his first injury, which is Docket No. 198,370, respondent's witnesses dispute this. Likewise, the co-workers claimant alleges witnessed his accidents have no recollection of same. Based upon the Appeals Board review of the record as a whole, we find that the Order by the Administrative Law Judge should be affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the March 16, 1995 Preliminary Hearing Order of Administrative Law Judge George R. Robertson should be, and the same is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of August 1995.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Robert A. Anderson, Ellinwood, KS  
Robert L. Feldt, Great Bend, KS  
George R. Robertson, Administrative Law Judge  
Philip S. Harness, Director